

APPEAL NO. 030067
FILED MARCH 5, 2003

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing (CCH) was held on October 16 and 17, 2002, with the record closing on November 4, 2002. The hearing officer determined that the appellant/cross-respondent's (claimant) compensable injury of _____¹, includes the following diagnosed medical conditions: 1) chronic headaches; 2) the respiratory conditions of sinobronchial syndrome, chronic sinusitis, allergic rhinosinusitis, dyspnea, chest heaviness, chronic bronchitis, and small airway disease; and, 3) toxic encephalopathy, a dysfunction of the central nervous system. The hearing officer also determined that the claimant's compensable injury did not include the following diagnosed medical conditions: 1) toxic effects of solvents and heavy metals; 2) chronic fatigue; 3) fibromyalgia; 4) dysfunctions of the autonomic nervous system; or, 5) dysfunctions of the immune system. The claimant appeals the determinations that the above-specified conditions were not included in her compensable injury on sufficiency of the evidence grounds, notes that the hearing officer misstates the year of the date of injury as 2002, argues that the respondent/cross-appellant (carrier) accepted as compensable the "toxic effects of solvents and heavy metals," contends that Conclusion of Law No. 3 should include the previously accepted "diseases" of eye and skin disorders, notes that she sustained chemical exposure to Hysol (an epoxy), and not to paint (as allegedly misrepresented in the Decision and Order²), and challenges the admission of Carrier's Exhibit Nos. 27 and 30 as irrelevant. The carrier appeals the determinations that the above-specified conditions were included in the claimant's compensable injury on sufficiency of the evidence grounds, challenges the admission of the testimony of Dr. M because he was allegedly not timely disclosed as a witness, challenges the admission of Claimant's Exhibit No. 16 on the grounds of relevance and untimely exchange, and contends that the hearing officer failed to consider Carrier's Exhibit No. 25, a pulmonologist's report (that the carrier argues is dispositive of this case). The claimant filed a response to the carrier's appeal, urging that the Appeals Panel perform a comprehensive review of the medical evidence and that the hearing officer be affirmed in those determinations made in her favor.

DECISION

Affirmed, as modified.

First, we address the claimant's notation that the hearing officer misstated her date of injury as "April 2, 2002," instead of "_____." The claimant is correct,

¹ At a prehearing conference on April 23, 2002, the parties stipulated that the claimant sustained a compensable injury as a result of chemical exposure in the form of an irritation of her skin and eyes.

²We note that the hearing officer correctly identifies the chemical substance to which the claimant was, as stipulated, exposed, as Hysol epoxy on page 8 of the Decision and Order.

and we hereby modify the Decision and Order to reflect a date of injury of “_____,” at all places it is referred to as “April 2, 2002.”

Also, as noted by the claimant, Conclusion of Law No. 3 did not include the parties’ prehearing stipulation that the claimant sustained a compensable injury as a result of chemical exposure in the form of skin and eye irritation. We therefore modify Conclusion of Law No. 3 to read as follows:

The compensable injury sustained on _____, includes skin and eye irritation as the result of chemical exposure, and the following diagnosed medical conditions: chronic headaches; the respiratory conditions of sinobronchial syndrome, chronic sinusitis, allergic rhinosinusitis, dyspnea, chest heaviness, chronic bronchitis, and small airway disease; and, toxic encephalopathy, a dysfunction of the central nervous system.

In addition, we address the claimant’s contention that the carrier stipulated that the claimant’s compensable injury included “toxic effects of solvents and heavy metals.” We conclude that the claimant’s contention in this respect is unsubstantiated, as the stipulation, in Hearing Officer’s Exhibit No. 9, reads, “WHEREAS the parties stipulated that the Carrier has accepted an inhalation incident which included irritation to the Claimant’s skin and eyes,” and does not include any reference to “toxic effects of solvents and heavy metals.”

Further, we conclude that the hearing officer did not abuse her discretion in admitting into evidence the testimony of Dr. M. The carrier argues that Dr. M should not have been allowed to testify because he was not timely disclosed as a witness. The carrier made the same objection at the CCH, and the hearing officer ruled that because Dr. M was the author of a report that was timely exchanged with the carrier, Dr. M’s testimony and conclusions were admissible. Accordingly, we cannot conclude that the hearing officer abused her discretion, as she followed governing guidelines and principles. Morrow v. H.E.B., Inc., 714 S.W.2d 297 (Tex. 1986).

The carrier likewise challenged the admission of Claimant’s Exhibit No. 16, the chemical exposure report by (R&A report), as being not timely exchanged. The carrier also argued that the R&A report was based upon assumptions, guess, and speculation. The hearing officer ruled that while the R&A report was not timely exchanged, the claimant had used due diligence in procuring the report and in producing it to the carrier, and thus had good cause for not timely exchanging it. Thus, we cannot conclude that the hearing officer abused her discretion in admitting the R&A report. See Morrow, supra.

The carrier also maintained that the hearing officer failed to consider Carrier’s Exhibit No. 25, a pulmonologist’s report that the carrier believed to be dispositive on the extent of injury issue. In our review of the record, we find this argument without support,

as the hearing officer clearly poured over the evidence presented in a comprehensive and meticulous fashion.

The claimant challenged the admission of Carrier's Exhibit Nos. 27 and 30 on the grounds that they were "irrelevant" and "not probative" to the issues at hand. The hearing officer determined that Carrier's Exhibit No. 27 was timely exchanged and thus admissible. See Morrow, *supra*. With respect to Carrier's Exhibit No. 30, the record does not reflect that the claimant objected to this exhibit at the CCH; therefore, the claimant has waived her objection to its admission, and cannot challenge its admission for the first time on appeal.

The hearing officer did not err in determining the claimant's extent of injury. Extent of injury is a question of fact. It was for the hearing officer, as the trier of fact, to resolve the conflicts and inconsistencies in the evidence and to determine what facts had been established. Garza v. Commercial Ins. Co., 508 S.W.2d 701 (Tex. Civ. App.-Amarillo 1974, no writ). This is equally true regarding medical evidence. Texas Employers Insurance Association v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ). This case was especially rich in medical evidence, as the hearing officer notes, and it is clear that she painstakingly reviewed that medical evidence properly admitted. In view of the evidence presented, we cannot conclude that the hearing officer's determinations are so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain v. Bain, 709 S.W.2d 175 (Tex. 1986).

The decision and order of the hearing officer are affirmed, as modified.

The true corporate name of the insurance carrier is **AMERICAN HOME ASSURANCE COMPANY** and the name and address of its registered agent for service of process is

**WILLIAM PARNELL
8144 WALNUT HILL LANE, SUITE 1600
DALLAS, TEXAS 75231.**

Terri Kay Oliver
Appeals Judge

CONCUR:

Elaine M. Chaney
Appeals Judge

Edward Vilano
Appeals Judge